IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CONTEMPT PETITION NO. 391 OF 1998

Suleman Haji Ismail
Indian Inhabitant of Bombay
residing at Room No.1,
Raut Chawl, Bandongri,
Ashok Nagar, Kandivali (E),
Mumbai 400 101. ...Petitioner

Versus

1. Municipal Corporation
of Greater Bombay,
A Corporatin constituted
under the Bombay Municipal
Corporatin Act, having their
Office at Mahapalika
Building, Mahapalika Road,
Fort, Mumbai 400 001.

2. WARD OFFICER,
R/South Ward,
Municipal Corporatin of
Greater Bombay, Kandivali,
Mumbai.

3. Shri. JAKHADI
Assistant Engineer,
Employees of Municipal
Corporation of Greater
Bombay, R/South Ward,
Kandivali, Mumbai.

4. Shridhar Shellar,
Municipal Corporator,
Ward No.142,
Kandivali (East),
Mumbai ...Respondents.

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Mr. Anil Singh, counsel for Petitioner

Mr. A.Y. Sakhare Sr. counsel with Mr. A.J. Bhor counsel for Respondent Nos. 1 to 4.

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CORAM: B. H. MARLAPALLE, J.
DATED: 24TH FEBRUARY, 2005

JUDGMENT:-

1. First Appeal No. 926 of 1997 was filed by the

present petitioner being aggrieved by the order passed by the trial Court dismissing his suit in which he had claimed ownership on the suit property by adverse possession, was admitted by this Court on 6.10.97 and Rule was made returnable after four weeks. In the meantime, status quo as on 6.10.97 was directed to be maintained. As the appeal could not be heard after four weeks, the petitioner moved civil application No.5803 of 1997 and the same was disposed of by the Court vide order dated 13.1.98 directing the status quo to continue till the hearing and final disposal of the appeal. Admittedly, the appeal is still pending.

2. This contempt petition arises on the alleged ground that the order of status quo passed by this Court has been wilfully disobeyed by the respondents. The allegations are in two parts. In the first part it is stated that three rooms of the petitioner on the suit property were demolished by the Ward Officers as well as the Corporator on 18.11.98 and subsequently on Sunday thereafter and respondent Nos. 3 and 4 alongwith other employees of respondent No.1 Corporation entered in the suit property and removed the doors and roof of W.C. which existed upon the suit property. In the second part, it is alleged that the respondents were trying to put an unauthorised construction on W.C. without consent of

the petitioner and in gross violation of this court's order.

3. Shri. Madhukar Maruti Kamble, Deputy Chief Engineer of the respondent No.1 Corporation has filed affidavit in reply. In the first place it has been stated that the petitioner is no more and the learned counsel for the petitioner confirms the same. Regarding the allegations of demolition, it is pointed out by the affiant that on 18.11.98 and/or 29.11.98 the respondent No.3 was busy in mass demolition of encroachments in some other area and they were not at any time present or entered into the suit property on any of those two days. It is further stated that the demolition register maintained by the R/S Ward as per arranged programme of a particular dates and to be seen that on 18.11.98, the encroachment of the stalls on the pavements and roads are removed in the presence of respondent No.3 as well as affiant. It is further denied that the petitioner was in possession of the suit property as on the date the status quo order was passed.

4. The respondent Nos. 1 and 2 are not impleaded by the name of the Officer concerned, the respondent No.3 has retired from the service of the respondent No.1 Corporation and the respondent No.4 was the

Corporator at the relevant time. In the first part of the complaint, it is alleged that the Ward Officer as well as the Municipal Corporator came upon the suit property on 18.11.98 and demolished three rooms of the petitioner. The Ward Officer is not impleaded by name and therefore, this contempt petition is not maintainable against the respondent No.2. Even otherwise, Suit No.1260 of 1985 was filed, for an order of injunction restraining the respondent No.1 from demolishing the suit premises without following due process of law and it came to be dismissed on 3.2.97. First Appeal No.926/97 which is pending before this Court does not as at present create any right of ownership or does not accept the possession of the petitioner on the suit property. The Deputy Chief Engineer of the respondent No.1 Corporation has filed an affidavit and stated on oath that on 18.11.98 or on 29.11.98 none of the employee had entered into the suit premises and undertaken any demolition. There cannot be any case of willful disobedience of this court's order and it would not be safe to accept such a contention of willful disobedience of the order passed regarding status-quo.

5. Hence, this contempt petition must fail and the same is hereby dismissed.